



## TRANSMITTAL MEMORANDUM

**TO:** The Honorable Mayor and City Council

**FROM:** Lacey G. Simpson, Acting General Manager

**DATE:** July 22, 2022

**RE:** **Exempting the Procurement of Annual Maintenance and Support Services for the Telecommunications Division's NEC Microwave Network Equipment from the Competitive Bidding/Written Quotation Requirements of the Ketchikan Municipal Code – Aviat Networks**

The motion detailed below was prepared at the request of Acting Telecommunications Division Manager Dan Lindgren, who asked that it be placed before the City Council for consideration at its meeting of August 4, 2022. If adopted, the motion provides for exempting the procurement of annual maintenance and support services for the Telecommunications Division's NEC microwave network equipment from the competitive bidding/written quotation requirements of the Ketchikan Municipal Code and authorizing the acquisition of such maintenance and support services from Aviat Networks at a cost of \$27,682.

Subparagraph 6 of Section 3.12.050(a) of the Ketchikan Municipal Code provides for exempting the purchase of annual maintenance and support services from competitive bidding/quotation when:

“Supplies, materials, equipment or contractual services which should be purchased from a specific source in order to prevent incompatibility with previously purchased supplies, materials, equipment or contractual services. For the purpose of this paragraph, the term ‘incompatibility’ is defined as:

- (A) The inability to interconnect, combine, interchange, or join; or
- (B) That which causes substantial duplication in maintenance, expertise or training or in the stocking of parts, materials, supplies or replacements. Any purchase which is to be excluded from competitive bidding by authority of this subparagraph which exceeds \$10,000, must first be approved by the council.”

The rationale for the exemption is detailed in Mr. Lindgren's transmittal memorandum and requires no elaboration on the part of this office. I concur with the Acting Telecommunications Division Manager's recommendation.

Mr. Lindgren will be attending the City Council meeting of August 4, 2022, in order to address any questions and/or concerns that Councilmembers may have.

A motion has been prepared for City Council consideration.

### **RECOMMENDATION**

Pursuant to subparagraph 6 of Section 3.12.050(a) of the Ketchikan Municipal Code, it is recommended the City Council adopt the motion exempting the procurement of annual maintenance and support services for the Telecommunications Division's NEC microwave network equipment from the competitive bidding/written quotation requirements of the Ketchikan Municipal Code; authorizing the Acting General Manager to enter into an agreement for such annual support services with Aviat Networks at a cost not to exceed \$27,682; and approving funding from the Telecommunications Division's 2022 Software & Equipment Maintenance Services account (Account No. 635.04).

**Recommended Motion:** Pursuant to subparagraph 6 of Section 3.12.050(a) of the Ketchikan Municipal Code, I move the City Council exempt the procurement of annual maintenance and support services for the Telecommunications Division's NEC microwave network equipment from the competitive bidding/written quotation requirements of the Ketchikan Municipal Code; authorize the Acting General Manager to enter into an agreement for such annual support services with Aviat Networks at a cost not to exceed \$27,682; and approve funding from the Telecommunications Division's 2022 Software & Equipment Maintenance Services account (Account No. 635.04).



## Memorandum

**To:** Lacey Simpson, Acting KPU General Manager

**From:** Dan Lindgren, Acting KPU Telecommunications Division Manager

**Date:** July 22, 2022

**Subject:** **Authorizing and Exempting the Procurement of Annual Maintenance and Support Services from Aviat Networks in the amount of \$27,682 from the Competitive Bid / Written Quotation Requirements of the Ketchikan Municipal Code**

The purpose of this memorandum is to request that the General Manager seek City Council approval to purchase two years of annual maintenance and support services from Aviat Networks for our NEC microwave equipment. If adopted, the approval-motion provides for exempting the procurement of two years of Aviat Networks maintenance and support from the competitive bidding / written quotation requirements of the Ketchikan Municipal Code and authorizing the acquisition of two years maintenance and support services for our NEC microwave equipment from Aviat Networks at a cost not to exceed \$27,682.

### Background

KPU Telecommunications (KPUTel) utilizes NEC microwave equipment for our microwave network between Ketchikan and Prince Rupert, BC. Although KPUTel's new subsea fiber is already in service and the primary route - KPUTel will continue to utilize the NEC microwave system between Ketchikan and Prince Rupert as a critical component of our redundant network.

NEC has transitioned support for the microwave equipment that KPUTel utilizes to Aviat Networks. Aviat Networks has the requisite expertise and resources to respond to NEC microwave equipment outages and ensure optimum performance. The cost for two years of annual maintenance and support services is \$27,682. Aviat Networks offered a 15% (\$4,885) discount if two years of support are purchased. It is financially prudent to accept this discount.

At this amount the Ketchikan Municipal Code requires that staff seek competitive bids with written quotations - unless the City Council approves an exemption. Subparagraph 6 of section 3.12.050 (a) of the KMC provides an exemption that is appropriate for this transaction. Subparagraph (6) states the following:

“Supplies, materials, equipment or contractual services which should be purchased from a specific source in order to prevent incompatibility with previously purchased supplies, materials, equipment or contractual services. For purposes of this subparagraph, the term “incompatibility” is defined as:

- (a) The inability to interconnect, combine, interchange, or join; or
- (b) That which causes substantial duplication in maintenance, expertise or training or in the stocking of parts, materials, supplies or replacements

Any purchase which is to be excluded from competitive bidding by the authority of this subparagraph which exceeds ten thousand dollars must first be approved by the council.”

Since acquiring maintenance and support services for the NEC microwave equipment from Aviat Networks is the only option available to KPU that would prevent incompatibility, I recommend seeking approval from City Council to exempt this procurement from the competitive bid/written quotation requirements of the KMC.

The maintenance and support services are part of the 2022 operating budget in the Software and Equipment Maintenance Services Account (635.04)

**Recommended Motion:**

Pursuant to Subparagraph 6 of Section 3.12.050 (a) of the Ketchikan Municipal Code, I move the City Council exempt the procurement of NEC microwave equipment maintenance and support services from Aviat Networks, in the amount of \$27,682 from the competitive bid and written quotation requirements of the KMC; and approve funding from the KPU Telecommunications Division 2022 Software and Equipment Maintenance Services Account (635.04).

Cc: Michelle Johansen, City Finance Director

July 12, 2022



# City of Ketchikan, AK

## AviatCare Services

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## 1. EXECUTIVE SUMMARY

The included Aviat proposal specifies the services and responsibilities applicable to contract support of microwave and associated products from Aviat U.S., Inc. ("Aviat Networks" or "Aviat") and its partners. The Services listed in this proposal shall be governed by the terms and conditions set forth in this Agreement and the Aviat Global Support Guidelines ("Agreement"). Neither party is obligated to provide Services until the Agreement is executed by both parties and a Purchase Order has been issued. Any capitalized terms not defined herein shall have the meaning ascribed to it in the Agreement. Should a conflict exist between any other agreement between the parties and this Agreement, this Agreement shall control.

Pricing quoted as part of this proposal is valid for 120 days. Services are quoted and payable in US dollars and reflect the scope of work as specified within this proposal. The services listed below shall only be eligible for support, which includes any customer spares purchased under the included Aviat Networks Sales Order Numbers. Consumable items such as cables or batteries are excluded. Unless otherwise specified and additionally included, facility maintenance including but not limited to towers, shelters, air conditioners, generators and fuel storage are also excluded.

## 2. AVIATCARE SERVICES: MAINTENANCE COVERAGE ("Services")

Aviat Networks will provide the following services

- |                                                                   |                                                                 |
|-------------------------------------------------------------------|-----------------------------------------------------------------|
| <input checked="" type="checkbox"/> Repair Services               | <input type="checkbox"/> Network Monitoring 24x7                |
| <input type="checkbox"/> Advance Replacement                      | <input type="checkbox"/> Network Monitoring Nights and Weekends |
| <input type="checkbox"/> Repair Logistics Program                 | <input type="checkbox"/> Remote Software Upgrade                |
| <input checked="" type="checkbox"/> Remote Technical Support 24x7 | <input type="checkbox"/> Performance Management                 |
| <input type="checkbox"/> ProVision Support                        | <input type="checkbox"/> Performance Optimization               |
| <input type="checkbox"/> Onsite Ground Corrective Maintenance     | <input type="checkbox"/> Change Management                      |
| <input type="checkbox"/> Onsite Ground Preventive Maintenance     | <input type="checkbox"/> Spares Management                      |
| <input type="checkbox"/> Onsite Tower Corrective Maintenance      | <input type="checkbox"/> Site Acceptance                        |
| <input type="checkbox"/> Onsite Tower Preventive Maintenance      | <input type="checkbox"/> Other                                  |
| <input type="checkbox"/> Hosted FAS                               |                                                                 |

## 3 DURATION OF SUPPORT PERIOD

The support period of the Maintenance Level Agreement is provided in the table below:

|                                 | START                        | FINISH        |
|---------------------------------|------------------------------|---------------|
| REPAIR SERVICES                 | July 1, 2022                 | June 30, 2023 |
| ADVANCED REPLACEMENT            | July 1, 2022                 | June 30, 2023 |
| REPAIR LOGISTICS PROGRAM        | July 1, 2022                 | June 30, 2023 |
| REMOTE TECHNICAL SUPPORT 24 X 7 | July 1, 2022                 | June 30, 2023 |
| PROVISION SOFTWARE SUPPORT      | Quote available upon request |               |

## 4. SUPPORT COSTS

### Extended Warranty services:

- ✓ USA-Based Priority Technical Support:  
Available 24 X 7
- ✓ Aviat Cloud (Web Support): Available 24 X 7; Level 2
- ✓ Repair Services: Unlimited 120 calendar day turnaround time

| Start Date: Date of PO<br>End Date: 1 Year Thereafter                                                                                 |                      |                                                                      |                              |
|---------------------------------------------------------------------------------------------------------------------------------------|----------------------|----------------------------------------------------------------------|------------------------------|
| Services                                                                                                                              | Services Part Number | Radio details<br>(per T/R)                                           | Extended Pricing (per Modem) |
| <b>Covers all 5000S/IPS Microwave Radios + Components</b>                                                                             | SNA-EWNEC1001286     | - QTY (12)<br>PO 2017-00000049<br>Sites: Mt Hays, HighMtn, Ketchikan | \$9,770                      |
|                                                                                                                                       | SNA-EWNEC1001286     | - QTY (8)<br>PO 2013-00001388<br>Sites: unknown                      | \$6,514                      |
| <b>Annual AviatCare Extended Warranty</b>                                                                                             |                      |                                                                      | <b>\$16,284<br/>1-Year</b>   |
| <b>Sub-Total 2-Years AviatCare Extended Warranty</b>                                                                                  |                      |                                                                      | <b>\$32,568</b>              |
| <b>Multi-Year Discount (15%)</b>                                                                                                      |                      |                                                                      | <b>(\$4,885)</b>             |
| <b>Total 2-Years AviatCare Extended Warranty</b>                                                                                      |                      |                                                                      | <b>\$27,682</b>              |
| <b>MULTI-YEAR ANNUAL INVOICE</b><br>PO must be for the total multi-year quoted price to take advantage of discount and annual invoice |                      |                                                                      | <b>\$13,841</b>              |

\*PO must be for full dollar amount to take advantage of multi-year discount. For multi-year agreements, customer can provide a PO for full dollar amount and agree to be invoiced annually against that PO or Sign this agreement and provide a PO annually for the yearly payment upon receipt of the Aviat invoice.

#### 4.1 OPTIONAL AND TRUE-UP SUPPORT FEES:

Aviat Networks quotes onsite support services based on the following factors: network configuration, number of dispatches for the duration of a contract, number of hours onsite per dispatch, tower crew mobilization/demobilization, spares availability, and any specialized site access requirements.

Aviat Networks offers customers the option, where available, to purchase one-time support services which are invoiced at the time of service request. In addition, Aviat can supply onsite support services in excess of negotiated contract terms where the number of dispatch requests exceed the number of quoted dispatches during a given contract period, Aviat Networks will invoice the customer for the additional services (True-up) at the time of dispatch request. Fees for one-time and True-up callouts are listed below.

| Optional, One-Time & True-Up Managed Services Fees:                                                                                |                      |                                            |
|------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------------------------------|
| Managed Network Service:<br>Miscellaneous, Additional Ground<br>Dispatch (Onsite Corrective and<br>Preventive Maintenance)         | SWW-<br>MSGENXX10199 | Per Occurrence<br>\$2,080                  |
| Managed Network Service:<br>Miscellaneous, Additional Tower<br>Dispatch (SLA restrictions apply)<br>- Emergency<br>- Non-Emergency | SWW-<br>MSGENXX20199 | Per Occurrence<br><br>\$11,000<br>\$ 8,333 |
| Managed Network Service:<br>Miscellaneous, Material                                                                                | SWW-<br>MSGENXX30199 | Per Occurrence<br>Time and Materials       |
| Managed Network Service:<br>Miscellaneous, Travel                                                                                  | SWW-<br>MSGENXX40199 | Per Occurrence<br>Time and Materials       |
| Managed Network Service:<br>Miscellaneous, Special Site Access<br>Equipment                                                        | SWW-<br>MSGENXX50199 | Per Occurrence<br>Time and Materials       |
| Managed Network Service:<br>Miscellaneous, Site Power Support                                                                      | SWW-<br>MSGENXX60199 | Per Occurrence<br>Time and Materials       |
| Miscellaneous, Misc Extra Onsite<br>Work                                                                                           | SWW-<br>MSGENXX70199 | Per Occurrence<br>Time and Materials       |

#### 4.2 SERVICE LEVEL SUPPORT DESCRIPTION

##### Access to Aviat Networks Customer Online Technical Support Site

The Customer will have access to the Aviat Networks Customer Online Technical Support web site 24/7 for a variety of tools and support services. Tools/support services include the following:

1. RMA Request & Status Updates.



2. RMA Reporting such as repair turnaround time performance.
3. Technical Support such as Service Request opening, reporting and status.
4. Information such as technical notes, frequently asked questions, solutions for commonly asked technical or operational issues.
5. Software Downloads.
6. Sales Order tracking and status (Eclipse Only).

URL: <http://www.aviatcloud.com/>

#### 4.2.1 REPAIR SERVICES

Repair services are available to the Customer during the standard manufacturing equipment warranty period which includes any repair or replacement of defective units during the stated warranty period. Additional charges may apply during the warranty period for customers returning a high volume of No Fault Found units, require advance replacements, or a non-repairable units. Prior to the warranty period expiring, customers may procure ongoing access to this support service through the purchase of an extended warranty program or through one of our AviatCare Maintenance support offerings. Otherwise the Repair service is made available for out of warranty products through a Per Incident billing process that can be enabled through our regional RMA Desk. See further details on how repair services are provided below.

All equipment under this specific Maintenance Level Agreement shall be covered with our standard Repair / Replace policy. There is no limit to the number of units returned for repair but customers are subject to the same limitations for No Fault Found (NFF), damaged beyond repair units, and non-returned Advance Replacement units where additional charges may apply:

- a) **Repair Center Support.** Customer shall place all RMA requests at the following link: [https://aviatcloud.com/rma\\_tracking.asp](https://aviatcloud.com/rma_tracking.asp). This link is available for use 24 hours a day, 7 days a week except where routine maintenance is performed. Customers can also email or fax RMA requests to the appropriate Aviat Networks Repair Center. Aviat Networks will typically fax or email a confirmation with an RMA reference number within one (1) business day. Requests can also be made via telephone during such Aviat Networks Repair Center's Business Hours.

In order for Aviat Networks to process an RMA request, the customer must provide the following information:

- Company name;
- Shipping and billing address;
- Part Number;
- Serial Number of the defective unit(s)
- Unit software load;
- Description of the suspected failure;
- Whether any special requirements exist;
- Maintenance Level Agreement contract number (if applicable); and
- Provide a purchase order at the applicable price for billable requests. Billable requests include any request for express service regardless of warranty status. Contact your local Aviat Networks Repair Center for price information.

- b) **Turnaround Time.** Aviat Networks will provide a Turnaround time on repair as per the following:

- 20 Calendar Day turnaround time on Aviat Networks manufactured equipment
- 45 Calendar Day turnaround on Aviat Networks Manufactured Discontinued equipment

- c) **Turnaround Time Calculation.** Turnaround time is measured from the time that a returned unit is received at the Aviat Networks Repair Center, which will be advised at time of issuing a RMA, until the time the unit is shipped from the Aviat Networks Repair Center. Thus, the measurement of turnaround time does NOT begin when a returned unit is shipped from the customer's premises

and does NOT include the shipping time accrued after the returned unit is shipped from the Aviat Networks Repair Center to the Customer's premises. Additionally, turnaround time will not be guaranteed in the following situations:

- If more than five (5) Units of the same type or more than ten (10) Units of any type are received at the same time.
  - Missing information such as failure details, return shipping address, shipping instructions and/or any other information that may affect the start of the repair process of the shipment of the Returned Unit as the repair completed.
  - Any returned unit is deemed No Fault Found.
  - Any returned unit received due to any of the reasons listed in the [Exclusions from Repair & Return](#) Clause of this Section.
  - Any returned unit received improperly packaged and therefore sustained physical or electrostatic damage in shipping.
  - Returned units placed in Isolation.
  - Event of Excusable Delay as described under the [Excusable Delay](#) clause of the Additional Terms & Conditions section of this Agreement.
- d) **OEM.** For OEM, repair turnaround times are set by the OEM supplier. Aviat Networks close working relationship with OEM suppliers assures the best possible turnaround time. These times will be communicated to customer at time of RMA issuance. Excludes Tower repair.
- e) **Packaging and Shipping Procedures.** Both Aviat Networks and the Customer are obligated to ensure that all deliveries are packaged in such manner as to achieve suitable mechanical and environmental protection during storage, handling and transport to the delivery address. Electrostatic Discharge (ESD) precautions should be followed during handling and packaging of all Units delivered. For each consignment of units shipped to Aviat Networks, the Customer must provide a detailed packing list and commercial (Proforma) invoice to support the delivery. Each commercial invoice must clearly state the full description, the value of each unit and the RMA number. Once a unit has been repaired and shipped to the Customer at the address provided by the Customer upon RMA request, Aviat Networks will send a pre-alert notification to the Customer comprising a faxed copy of the commercial invoice and airway bill number pertaining to the shipment.
- f) **Exclusions from Repair & Return.** The services to be rendered by Aviat Networks under this Agreement shall not comprise any damage, defects, malfunctions or failures caused by one or more of the following:
- Damage caused by mishandling, customer or third-party negligence, abuse or operation outside the Aviat Networks environment specifications, or due to a cause not solely attributed to Aviat Networks.
  - Modifications, alterations, or repairs made other than by Aviat Networks.
  - Damages by persons other than Aviat Networks or its authorized service providers.
  - Any modification, removal or obliteration of a serial number or other identifying mark or any attempts thereof other than by Aviat Networks' authorized personnel.
  - Damage that occurs during shipment from the Customer premises to Aviat Networks' premises outside the RLP (if applicable).
  - Installed, stored, used, handled or maintained contrary to Aviat Networks' written instructions.
  - Used in conjunction or combination with third-party material or equipment without the consent of Aviat Networks.

- Units returned for repair where there has been misuse, neglect, power failures, surges, accident or acts of nature such as fire, lightning strikes or flood.

Repairs necessitated during the Agreement period by any of the above causes may be made by Aviat Networks, and the Customer shall pay Aviat Networks' standard charges for time and materials, together with all shipping and handling charges arising from such repairs.

- g) **Stockpiling of Failed Units.** The Customer agrees to obtain an RMA Number for all failed units from an Aviat Networks Repair Center immediately following a failure and return the Units for repair immediately after receipt of the RMA Number from Aviat Networks. The customer agrees this Agreement will not apply retrospectively to cover any units failed and in the Customer's possession prior to the execution date of this Agreement, and will not apply to any units for which RMA numbers had already been obtained from Aviat Networks prior to the date of execution of this Agreement. Following execution of this Agreement the Customer agrees not to stockpile failed units and accepts that Aviat Networks will not be required to meet the turnaround times outlined in this Agreement if the units are not returned to Aviat Networks on receipt of an RMA Number or if they are stockpiled.
- h) **No Fault Found Fee.** If in any given quarter during the Maintenance Level Agreement support period the number of returned units a Customer reports as defective exceeds 10% of the total number of returned units received by Aviat Networks during the same support quarter, but are thereafter found to meet Aviat Networks product test specifications resulting in a No Fault Found repair status, Aviat Networks will charge the Customer the then-current No Fault Found inspection fee for each non-defective returned unit in excess of such ten percent (10%) as a True-Up support fee at the conclusion of the maintenance support quarter.
- i) **Damaged Beyond Repair.** Returned Units that Aviat Networks (in its sole discretion) determined are damaged Beyond Repair or have been repaired (or otherwise modified) by a party other than Aviat Networks will be placed in Isolation. The Customer shall be advised by fax or e-mail, within ten (10) days working days, of the nature and extent of the damage. The Customer shall be responsible for informing Aviat Networks of the next course of action. If the Customer decides to replace the unit(s), they must follow the usual purchasing process. Note: If the returned unit is no longer in current manufacture and/or is OEM, Aviat Networks will not guarantee availability of a unit for sale.

#### 4.2.2 ADVANCE REPLACEMENT

Advance Replacement provides the Customer with shipments of a limited number of Units intended as an advanced replacement of Returned Units, upon the Customer's request. The service encompasses the following:

- a) **Repair Center Support.** Customer shall place Advance Replacement requests at the following link: [https://aviatcloud.com/rma\\_tracking.asp](https://aviatcloud.com/rma_tracking.asp). This link is available for use 24 hours a day, 7 days a week. Customers can also email or fax the RMA request to the Aviat Networks Repair Center. Aviat Networks will typically fax or email a confirmation with an RMA Number within one (1) business day. Requests can also be made via telephone during such Aviat Networks Repair Center's Business Hours.
- b) **Shipping Costs.** Customer is responsible for all charges associated with shipping the Returned Unit to the designated Aviat Networks Repair Center, which shall be made pursuant to the delivery term DDU (Delivered Duty Unpaid) Aviat Networks Repair Center (Incoterms:2000). Aviat Networks is responsible for the charges associated with shipping the Returned Unit back to the Customer, which shipment shall be made pursuant to the delivery term DDU (Delivered Duty Unpaid), Customer's premises (Incoterm:2000).
- c) **Packaging and Shipping Procedures.** Both Aviat Networks and the Customer are obligated to ensure that all deliveries are packaged in such manner as to achieve suitable mechanical and environmental protection during storage, handling and transport to the delivery address.

Electrostatic Discharge (ESD) precautions should be followed during handling and packaging of all Units delivered. For each consignment of Units shipped to Aviat Networks, the Customer must provide a detailed packing list and commercial (Proforma) invoice to support the delivery. Each commercial invoice must clearly state the full description, the value of each unit and the RMA number. Once a unit has been repaired and shipped to the Customer at the address provided by the Customer upon RMA request, Aviat Networks will send a pre-alert notification to the Customer comprising a faxed copy of the commercial invoice and airway bill number pertaining to the shipment.

- d) **Returned Unit.** If this Agreement entitles the Customer to the RLP and the Customer elects to use it for the returned unit, the Customer will be invoiced for the list price of the Advance Replacement Unit(s) if Aviat Networks does not receive notification to pick-up the pertinent returned unit, at most, ten (10) days after Customer's receipt of the Advance Replacement Unit. In the event that the Customer is not entitled to the RLP or the Customer elects to return the returned unit to Aviat Networks via a freight forwarder outside of the RLP, the Customer will be invoiced for the list price of the Advance Replacement Unit if Aviat Networks does not receive the pertinent returned unit at the Aviat Networks Repair Center within, at most, thirty (30) days after receipt of the Advance Replacement Unit. The returned unit will become the property of Aviat Networks. The Customer agrees that the returned unit must be repairable and does not fall into any of the categories listed in the [Exclusion from Advance Replacement](#) clause.
- e) **Exclusion from Advance Replacement.** The services to be rendered by Aviat Networks under this Agreement shall not comprise any damage, defects, malfunctions or failures caused by one or more of the following:
- Damage caused by mishandling, customer or third-party negligence, abuse or operation outside the Aviat Networks environment specifications, or due to a cause not solely attributed to Aviat Networks.
  - Modifications, alterations, or repairs made other than by Aviat Networks.
  - Damages by persons other than Aviat Networks, or its authorized service providers.
  - Any modification, removal or obliteration of a serial number or other identifying mark or any attempts thereof other than by Aviat Networks' authorized personnel.
  - Damage that occurs during shipment from the Customer premises to Aviat Networks' premises outside the RLP (if applicable).
  - Installed, stored, used, handled or maintained contrary to Aviat Networks' written instructions.
  - Used in conjunction or combination with third-party material or equipment without the consent of Aviat Networks.
  - Units returned for repair where there has been misuse, neglect, power failures, surges, accident or acts of nature such as fire, lightning strikes or flood.
- f) **No Fault Found Fee.** If in any given quarter during the Maintenance Level Agreement support period the number of returned units a Customer reports as defective exceeds 10% of the total number of returned units received by Aviat Networks during the same support quarter, but are thereafter found to meet Aviat Networks product test specifications resulting in a No Fault Found repair status, Aviat Networks will charge the Customer the then-current [No Fault Found](#) inspection fee for each non-defective returned unit in excess of such ten percent (10%) as a True-Up support fee at the conclusion of the maintenance support quarter.
- g) **Limits.** Customer is entitled to receive a limited number of Advance Replacement Units per year. This number is not to exceed ten percent (10%) of the total Repair & Return requests during that year. Accrued Advance Replacement Units that have not been requested by the Customer may not be carried over to the next year. Additional Advance Replacement Units will be provided at Aviat Networks' then current prices, terms and conditions.

- h) **Unavailability.** If an Advance Replacement Unit is not available, then Aviat Networks will repair the Returned Unit within a mutually agreed Turnaround time. Customer agrees that repair of the Returned Unit shall be Aviat Networks' sole obligation, and the Customer's sole remedy, if an Advance Replacement Unit requested by the Customer is not available.
- i) **Turnaround Time Commitments.** Standard Advanced Replacement service ensures customer will receive a comparable unit to the one being returned within 3 to 5 business days from date of RMA. If customer requires a replacement unit in a shorter period of time there is an added charge for this and based on replacement unit availability will be delivered on a next business day basis. Customer will be informed at time of RMA request whether this service can be provided or not depending on component availability.

#### 4.2.3 REPAIR LOGISTICS PROGRAM (RLP)

Aviat Networks shall provide free freight to the Customer for all Units returned via the Aviat Networks Repair Logistics Program (RLP). In the event that the Customer returns Units to Aviat Networks via a freight forwarder outside of this Program, all freight expenses and damage liability will be the responsibility of the Customer. Aviat Networks is responsible for all tariffs, duties, or taxes associated with importing Units for repair. After the repair, the Units shall be returned to the Customer DDU (Delivered Duty Unpaid) Customer's premises (Incoterms 2000). To implement the return of a Unit via this Program the Customer shall request an RMA for the Unit using the link in the [Repair Services](#) or [Advance Replacement](#) Sections or the contact information as listed in the [Aviat Networks Contacts](#) Section.

**Liability of Units Damaged During Shipping.** Aviat Networks will assume responsibility for insuring the Units against loss or damage that is moving via the RLP. The Customer shall examine the condition of all shipments returned from Aviat Networks via the RLP at the time of delivery. Visible signs of damage shall be brought to the attention of the carrier and the contents shall be examined for damage immediately. Aviat Networks will not be liable for any direct reports by the Customer for Units that are found to be damaged upon receipt by the Customer that are made over seven (7) days after the Units have been delivered. Units damaged through transit shall be returned for repair at Aviat Networks through the normal return process. Damage or loss incurred to Units shipped to Aviat Networks by the Customer outside the RLP shall be the responsibility of the Customer.

#### 4.2.4 REMOTE TECHNICAL SUPPORT 24 X 7

Customer 24 X 7 Remote Support

24 X 7 Remote Support provides around-the-clock (24 X7) telephone access to Aviat Networks' Technical Assurance Center in order to resolve Critical Service Requests, Major Service Requests, Minor Service Requests and Inquiry Service Requests.

- a) **Telephone Number.** Customer may contact Aviat Networks' Technical Assistance Center (TAC) regarding such Service Requests via telephone at any time during normal business hours. **OR** Customer may contact Aviat Networks' Technical Assistance Center (TAC) regarding such Service Requests via telephone at any time during the day or night. For night support services (after business hours in the local time zone), Aviat Networks will handle all such requests that are Critical or Major that the Customer reasonably categorizes as being High Priority. In addition with this service customer can pre-schedule after hours support when doing a new software installation or a network upgrade related to covered equipment.
- b) **Rapid Response Time.** Aviat Networks will route Critical Service Requests to the appropriate TAC subject matter expert within fifteen (15) minutes of call receipt.
- c) **Service Request Number.** Aviat Networks will assign, to each Service Request, a number that will be logged, tracked and stored in our Case Management database.

- d) **Service Request Management.** Aviat Networks will dedicate continuous attention to Critical and Major Service Requests until service is restored or request is closed. Aviat Networks will work to resolve the Service Request until Customer accepts the proposed solution, at which point the TAC will close the Service Request.
- e) **Documented Escalation Procedures.** Aviat Networks will implement internal escalation and notification procedures in order to facilitate the timely resolution of Service requests by a TAC Engineer with an adequate level of expertise. The technical support process includes rigid managerial escalations that are intended to facilitate the appropriate handling of recovery efforts and Customers being regularly updated on the status of the Service Request. Additional information on this escalation process is available in our Global Network Service Customer Support guidelines document available on our website at [www.aviatnetworks.com](http://www.aviatnetworks.com).
- f) **Service Request Submission.** Under this Agreement, there is no limit to the number of Service Requests that Customer may submit for resolution. Customer may also define and authorize specific users within its organization to have access to this Service Request Submission Service. To ensure appropriate management of this support Aviat Networks has implemented a Support Assurance Program where an Express PIN will be assigned to each customer which clearly identifies the level of service a customer is entitled to receive. All Service Request Submissions will require Express PIN information prior to being submitted.

#### Service Request Severity Classifications

There are four (4) Service Request severity classifications: (a) Critical; (b) Major; (c) Minor; and (d) Inquiry. Critical, Major and Minor Service Requests pertain to problems in the Product. Inquiry Service Requests pertain to questions about the Product or Services. The four (4) Service Request severity classifications are defined as follows:

- a) **Critical Service Requests** are those that severely affect service, traffic, billing and/or maintenance capabilities, and require immediate corrective action (regardless of the time of day or day of the week).
- b) **Major Service Requests** are those that cause conditions that seriously affect Product operation, maintenance and/or administration, and require immediate attention. The urgency is less than in Critical Service Requests because of a lesser immediate or impending effect on Product performance, customer and/or network operation and revenue.
- c) **Minor Service Requests** are problems that are tolerable during Product use, do not significantly impair the functioning of the Product and do not significantly affect service to customers.
- d) **Inquiry Service Requests** are questions about technical details concerning the usage or behavior of the Product.

#### 4.2.5 PROVISION SUPPORT 24 X 7

Aviat Networks shall provide remote technical support to the Customer on ProVision. The remote technical support 24 X 7 shall be provided as per the terms outlined in the Remote Technical Support 24 X 7 section of this Agreement.

Aviat Networks shall provide support on the current and previous ProVision production release and will investigate all reproducible product anomalies for the supported version. Aviat Networks shall also provide general availability releases and product updates to the Customer free of charge during the coverage period.

#### Customer Responsibility

To enable the Aviat Networks TAC to fully investigate ProVision issues, the Customer shall provide the TAC the appropriated logs and remote access where possible. The Customer will provide the



capability to allow Aviat Networks to remotely access the Customer's network by means of a secure internet connection to the Customer's site. This connection process will need to be defined at time of Agreement such that any issues arising after Agreement closure can be addressed expeditiously.

#### Exclusion from Provision Support 24 X 7

The services to be rendered on ProVision by Aviat Networks under this Agreement shall not comprise any services, which are required as a result of one or the more of the following:

- Customers using old versions of ProVision. The ProVision Agreement provides regular updates; customers are required to have the current GA release or the previous GA release installed and commissioned before they can obtain Aviat Networks technical support.
- Customer's lack of basic user training. It is expected that all users will have received basic user training when the ProVision system was installed.
- Network Planning; NMS Integration; Training courses; Installation and Commissioning; On Site Support. These are separate Aviat Networks service offerings, which are not delivered under this Agreement.
- Due to the complex nature of ProVision issues, which may be network related rather than ProVision related, not all Customer-defined level three product anomalies can be rectified within the commercial bounds in which Aviat Networks operates. Aviat Networks will require that all product anomalies are reproducible, prior to the commencement of any detailed fault analysis or potential product re-engineering. Aviat Networks undertakes to provide a response on all logged product issues and will provide work-around's where possible.

## 5. AVIAT NETWORKS CONTACTS

Outlined below is the process to contact Aviat Networks once the Agreement is effect.

| For Questions or concerns on the Agreement either before or after it is in effect, please contact:                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>NORTH AMERICA</b><br><b>Repairs, Returns &amp; Advance Replacements</b><br>Phone: 1--800-227-8332 (selecting Option 2, then 1)<br><br>Direct number: 1-210-526-6345<br><br>Fax: 1-210-526-6315<br><br>E-mail: <a href="mailto:CustomerCare.Americas@aviatnet.com">CustomerCare.Americas@aviatnet.com</a><br><br>Online RMA Request:<br><a href="https://aviatcloud.com/rma_tracking.asp">https://aviatcloud.com/rma_tracking.asp</a> | <b>NORTH AMERICA</b><br><b>Technical Assistance</b><br>Phone: 1-800-227-8332 (Option1, enter PIN, press 1 to confirm PIN, then Option 1 for TAC)<br><br>Direct number: 1-210-526-6345<br><br>Fax: 1-210-526-6315<br><br>E-mail: <a href="mailto:TAC.AM@aviatnet.com">TAC.AM@aviatnet.com</a><br><br>Online Technical Assistance Request: <a href="http://www.aviatcloud.com">www.aviatcloud.com</a> |

## 6. ADDITIONAL TERMS AND CONDITIONS

This Agreement is between the party purchasing services described herein (the "Customer"), with Aviat U.S., Inc., a wholly owned subsidiary of Aviat Networks Inc. ("Aviat Networks"), with offices at 200 Parker Drive, Suite C100A, Austin, Texas 78728 .

### 6.1 SCOPE OF SERVICES

Aviat Networks will furnish the services outlined in the [Service Level Support](#) Section of this Agreement ("**Services**") for the products for Customer as may be required from time to time for the period specified in the [Duration of Support Period](#) Section providing receipt and acceptance of the Customer's purchase order. The Services will be provided in conformity with the terms, conditions, specifications and other requirements of this Agreement and each request for Services will be governed by the terms and conditions stated herein.

The Customer must ensure that the Products to be included in this Agreement be in good operating condition prior to the commencement of this Agreement. Aviat Networks, Inc. reserves the right to inspect any and all of the Products to be included in the Agreement prior to the commencement of the Agreement, and if the Product is found to be defective, the Customer shall be responsible for the cost of repair of the defective units.

An authorization to return units to Aviat Networks under this Agreement must be obtained from an Aviat Networks representative prior to making shipment to the Aviat Networks' Repair Center. Aviat Networks warrants that each Unit that is repaired or replaced under this Agreement, shall, at the time of return to Customer, for a period of ninety (90) days thereafter or until the expiration or termination of this Agreement, whichever is longer, be free from defects in materials and workmanship. Such warranty shall not include any consumable components to which a specific manufacturer's guarantee applies. If any Unit shall prove to be defective in materials or workmanship under normal intended usage, operation and maintenance during the term of this Agreement, as determined by Aviat Networks after examination of the Unit claimed to be defective, then Aviat Networks shall repair or replace, at Aviat Networks' sole option, such defective Unit, in accordance with procedures specified herein, at no additional cost, exclusive, however, of the cost of labor by the Customer's own employees, agents or contractors in identifying, removing or replacing the defective part(s) of the Units.

Liability of Aviat Networks for breach of any and all warranties hereunder is expressly limited to the repair or replacement of defective Units as set forth in this Agreement, and in no event shall Aviat Networks be liable for special, incidental or consequential damages by reason of any breach of warranty or defect in materials or workmanship.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER ORAL, WRITTEN, EXPRESSED, IMPLIED, OR STATUTORY. IN PARTICULAR, THE IMPLIED WARRANTIES OF FITNESS FOR PARTICULAR PURPOSE AND MERCHANTABILITY ARE HEREBY DISCLAIMED AND SHALL NOT BE APPLICABLE EITHER FROM AVIAT NETWORKS OR ANY OTHER EQUIPMENT MANUFACTURER. AVIAT NETWORKS' WARRANTY OBLIGATIONS AND CUSTOMER'S REMEDIES THEREUNDER ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS CONTRACT, UNDER NO CIRCUMSTANCES SHALL AVIAT NETWORKS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY CLAIMING UNDER CUSTOMER FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR LOSS OF CAPITAL, REVENUE OR PROFITS AS A RESULT OF A BREACH OF ANY PROVISION OF THIS CONTRACT. CUSTOMER HEREBY INDEMNIFIES AVIAT NETWORKS AGAINST ALL LOSS OR LIABILITY FROM CLAIMS BY CUSTOMER OR A THIRD PARTY ARISING OUT OF OR RELATING TO THE INSTALLATION, OPERATION, OR USE OF THE EQUIPMENT, WHETHER ON ACCOUNT OF NEGLIGENCE OR OTHERWISE. IN NO EVENT SHALL AVIAT NETWORKS' LIABILITY TO CUSTOMER, OR ANY PARTY CLAIMING THROUGH CUSTOMER EXCEED THE LESSER OF \$100,000.00 USD OR THE ACTUAL SALES PRICE PAID BY CUSTOMER FOR ANY ITEMS SUPPLIED HEREUNDER.

#### **EXCLUSIONS:**

Except as set forth below, the following are excluded from the scope of this Agreement:

1. Repair or replacement of Products which have been subjected to:
  - damage as a result of Customer's fault, negligence, improper use or failure to maintain Products in good working order; or
  - accident (including fire, flood, storm, lightning strike, or other act of God)
2. Repair or replacement of Products furnished, modified, altered or repaired by Customer or any other third party other than Aviat Networks or its authorized agent.
3. Repair of Products that are not repairable due to lack of component availability.



4. Expedited Services such as Emergency Repair. Expedited Services may be requested and will be executed based on inventory availability only. Expedited Services will be quoted at time of service request;
5. Repair of Antenna Systems. Tower crews, and the associated dispatch/labor support, for repairing antenna systems are excluded from Warranty and Extended Warranty unless specifically identified as a purchased service option. Field support for antenna repair will be contracted by the Customer on a per incident basis.

## 6.2 PRICES/PAYMENT/TAXES/SHIPPING

All payments shall be made via check to the accounts specified on the invoice in advance of the commencement of each year of service/coverage. Customer shall make payment of the total amount due to Aviat Networks within thirty (30) days from the invoice date, unless otherwise specified or agreed to in writing by Aviat Networks. In the event any payment by Customer is past due, Aviat Networks reserves the right to withhold Services until such payment is received. Prices and payment terms for Services or Products not included in this Agreement, such as Emergency Repair, etc., will be established on a case-by-case basis subject to the mutual written agreement of the parties.

All prices are exclusive of all sales, use, excise, and other taxes, duties or charges. Unless evidence of tax exempt status is provided by Customer, Customer shall pay, or upon receipt of invoice from Aviat Networks, shall reimburse Aviat Networks for all such taxes or charges levied or imposed on Customer, or required to be collected by Aviat Networks, resulting from this transaction or any part thereof.

All shipments made by Aviat Networks under this Agreement are made via the methods (as applicable) outlined in the [Repair Services](#) and/or [Advance Replacement](#) Sections or the [Repair Logistics Program](#) Section (if purchased) of this Agreement. Unless instructed otherwise, Aviat Networks will arrange for standard commercial shipping. In the event Customer requires other than standard commercial shipping, Customer will be responsible for any additional costs incurred. Responsibilities regarding the export of items delivered under this Agreement are detailed in the [Export and Re-Export Restrictions](#) and [Export Documents](#) Sections below.

If payment is not made when due, Aviat Networks may assess interest on the overdue balance at the lesser of 1-1/2% per month or the maximum rate allowed by law.

## 6.3 EXPORT AND RE-EXPORT RESTRICTIONS

Performance and delivery of the equipment, documents, Services and Software sold or delivered hereunder are subject to export control laws and regulations of the United States, as applicable, and conditioned upon receipt of required U.S. Government licenses and approvals by Aviat Networks. Customers shall not export or re-export Products or technical data delivered hereunder from the United States without complying with regulations of the Bureau of Export Administration of the United States Department of Commerce, as applicable. Customers shall not re-export the Products and technical data delivered hereunder from the country of delivery or to any facility engaged in the design, development, stockpiling, manufacturing or use of missile, chemical or biological weapons without fully complying with the regulations of the above United States government agencies. Customer warrants that it will comply with the United States Foreign Corrupt Practices act of 1997, as amended. Customer shall defend, indemnify and hold Aviat Networks harmless from and against any loss, damage, or liability arising out of Customer's failure to comply with this Section.

## 6.4 EXPORT DOCUMENTS

Customer shipments, under this Agreement, to Aviat Networks shall be made via the methods (as applicable) outlined in the [Repair Services](#) and/or [Advance Replacement](#) Sections or the [Repair Logistics Program](#) Section (if purchased) of this Agreement. Customer shall be responsible for insurance and for clearing incoming Products through customs in their country.

Customers shall be responsible for obtaining any necessary import licenses into the country of delivery. Aviat Networks shall provide certificates of delivery, affidavits of origin, and other information under its control which is necessary for Customer to import Products.

Customers shall provide all information, certificates and Letters of Assurance necessary for Aviat Networks to obtain any export licenses required for Aviat Networks to export Products out of the country for repair, as applicable. Aviat Networks shall be responsible for selection and/or approval of freight forwarder(s). In the event that Customer wishes to utilize a freight forwarder that is not acceptable to Aviat Networks, Customer shall be the shipper of record and shall be responsible for obtaining required export licenses which shall be in the name of the Customer.

#### 6.5 EXCUSABLE DELAY

Aviat Networks shall be excused from performance under this Agreement and not be liable to Customer for delay in performance attributable in whole or in part to any cause beyond its reasonable control, including but not limited to, actions or inactions of government whether in its sovereign or contractual capacity, judicial action, war, civil disturbance, insurrection, sabotage, act of a public enemy, labor difficulties or disputes, failure or delay in delivery by Aviat Networks' suppliers or subcontractors, transportation difficulties, shortage of energy, materials, labor or equipment, accident, fire, flood, storm or other act of God, or Customer's fault or negligence, or where compliance with any applicable environmental law or regulation by Aviat Networks is not reasonably technologically or economically feasible, or would otherwise require Aviat Networks to change its manufacturing process. ("Excusable Delay").

In the event of an Excusable Delay, Aviat Networks shall make reasonable efforts to notify Customer of the nature and extent of such a delay and Aviat Networks (i) will be entitled to a schedule an extension on at least a day-for-day basis, and (ii) in the event the delay is caused by Customer's fault or negligence, Aviat Networks will be also entitled to an equitable adjustment in the price under this Agreement.

#### 6.6 TERMINATION

Either party may terminate this Agreement immediately upon written notice to the other party if: either party breaches any provision of this Agreement in any respect and such breach remains unremedied for thirty (30) days after written notice from the non-breaching party. In the event this Agreement is terminated due to a breach by Customer, Aviat Networks shall retain the entire amount of the annual fee paid by Customer.

The right of termination provided herein is absolute and neither party shall be liable to the other for damages or otherwise by reason of such termination.

#### 6.7 ASSIGNMENT

Customer may not assign this Agreement in whole or in part without the prior written consent of Aviat Networks which shall not be unreasonably withheld.

#### 6.8 GOVERNING LAW, VENUE AND JURISDICTION

This Agreement will be governed by and construed in accordance with the laws of the **State of Texas**. The parties agree that any action to enforce any provision of this Agreement or arising out of or based upon this Agreement or the business relationship between Aviat Networks and Customer will be brought in a **local or Federal court** of competent jurisdiction in, **Texas**.

#### 6.9 ENFORCEABILITY

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired.

## 6.10 LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY CLAIMING UNDER THE OTHER PARTY FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, AND CONSEQUENTIAL OR LOSS OF PROFIT TYPES OF DAMAGES AS A RESULT OF A BREACH OF ANY PROVISION OF THIS CONTRACT.

IN NO EVENT SHALL AVIAT NETWORKS' TOTAL LIABILITY TO CUSTOMER OR ANY PARTY CLAIMING THROUGH CUSTOMER EXCEED THE GREATER OF ONE HUNDRED THOUSAND UNITED STATES DOLLARS (\$100,000.00 USD) OR THE ACTUAL SALES PRICE PAID BY CUSTOMER FOR SERVICES SUPPLIED HEREUNDER.

THIS ARTICLE SHALL SURVIVE THE TERM OR EXPIRATION OF THE AGREEMENT. CUSTOMER AGREES TO INDEMNIFY AVIAT NETWORKS AGAINST ALL LOSS OR LIABILITY FROM CLAIMS BY CUSTOMER OR A THIRD PARTY ARISING OUT OF OR RELATING TO CUSTOMER'S INSTALLATION, OPERATION, OR USE OF THE SERVICES OR PRODUCTS PROVIDED HEREUNDER, WHETHER ON ACCOUNT OF NEGLIGENCE OR OTHERWISE.

## 6.11 COMPLIANCE WITH LAW

- a) Customer agrees to assist Aviat Networks to comply with any applicable conventions, laws, rules, regulations, and bylaws incident to its activities under this Agreement, including, without limitation, United States export control regulations, the United States Foreign Corrupt Practices Act, and the United States anti-boycott regulations. Customer will promptly deliver to Aviat Networks a copy of any notice or instrument alleging a violation of any of these laws.
- b) Customer warrants that Customer shall comply with any and all applicable US federal and state laws, and shall operate in good faith to comply with other laws and regulations and industry best practices, applicable to Customer's performance hereunder, and shall promptly act to correct any noncompliance once identified.
- c) EXPORT AND RE-EXPORT RESTRICTIONS. Customer acknowledges that the Equipment and Licensed Programs sold or licensed to it by Aviat Networks under this Agreement may be subject to export controls under the laws of the United States or Canada. Customer will not export or re-export the Equipment or Licensed Programs, technology, or products manufactured from the technology that are the subject of the Agreement in violation of the export control laws of the United States or Canada.

## 6.12 ENTIRE AGREEMENT

This Agreement supersedes all previous communications, transactions, and understandings, whether oral, or written, and constitutes the sole and entire agreement between the parties pertaining to the subject matter hereof. No modification or deletion of, or addition to these terms shall be binding on either party unless made in writing and signed by a duly authorized representative of both parties.

## 7. SIGNATURES

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names.

**AVIAT U.S., Inc.**

**Customer**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date:

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Date:

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